

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-SE-350
Jennie Stuart Medical Center)	NAL/Acct. No. 200732100026
Hopkinsville, Kentucky)	FRN # 0001792423
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 10, 2007

Released: April 12, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Jennie Stuart Medical Center (“JSMC”), former licensee of Private Land Mobile Radio Station (“PLMRS”) Station WPOY291, Hopkinsville, Kentucky apparently liable for a forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. JSMC acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. JSMC’s license for its PLMRS station, WPOY291, expired on August 31, 2004. On August 30, 2006, JSMC filed a request for Special Temporary Authority (“STA”) to continue operating. The Wireless Telecommunications Bureau granted JSMC STA to continue operating under call sign WQFP653 on September 1, 2006.³

3. Because it appeared that JSMC may have operated its PLMRS station after the expiration of its license, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On December 27, 2006, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to JSMC.⁴

4. In its February 1, 2007 response to the LOI,⁵ JSMC states that on “August 28-29, 2006”

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903 and 1.949(a).

³ See STA File No. 0002731759 (granted September 1, 2006). The Wireless Telecommunications Bureau granted the STA without prejudice to any future FCC enforcement action against the medical center in connection with unauthorized operation of its radio facility.

⁴ Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to James King, JSMC (December 27, 2006).

⁵ Letter from Eric Lee, Vice President Development and Operations to Peter Waltonen, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 29, 2007) (“*LOI Response*”).

it first became aware that its license had expired.⁶ JSMC states that “somehow a mistake was made, clerically, and the expiration date was missed.”⁷ JSMC acknowledges that it operated PLMRS station WPOY291 without authority from August 31, 2004 to September 1, 2006 when the Wireless Telecommunications Bureau granted STA.⁸ JSMC also states that, once it realized that its license had expired, it submitted “a Special Temporary Authorization [request]... on August 31, 2006.”⁹ JSMC further states that it “is a non-profit corporation” and “the only hospital in Christian County, Kentucky providing to the community emergency room, intensive care unit, in-patient surgery, and other medical services attendant to a full service hospital.”¹⁰ JSMC used the license to “connect to ambulances, and Emergency Operations Center (EOC or 911 calls)”.¹¹ The Wireless Telecommunications Bureau granted JSMC’s STA request on September 1, 2006 and its application for a new license under call sign WQGN764 on February 12, 2007.¹²

III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations “no later than the expiration date of the authorization for which renewal is sought and no sooner than 90 days prior to expiration”.¹³ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁴

6. As a Commission licensee, JSMC was required to maintain its authorization in order to operate its PLMRS station. JSMC concedes that it operated the PLMRS station without Commission authority from August 31, 2004 to September 1, 2006.¹⁵ By operating its PLMRS station for approximately two years without authorization, JSMC apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. JSMC also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act,¹⁶ and Section 1.80(a) of the Rules,¹⁷ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s Rules,

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² See File No. 0002910501.

¹³ 47 C.F.R. § 1.949(a).

¹⁴ 47 C.F.R. § 1.955(a)(1).

¹⁵ *LOI Response* at 4.

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80(a).

and “repeatedly” means more than once.¹⁸ Based upon the record before us, it appears that JSMC’s violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as: “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁹ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$5,200.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authorization and three thousand dollars (\$3,000) for failure to file required forms or information.²⁰ As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²¹

10. We propose a forfeiture in the amount of \$5,000 for JSMC’s unauthorized operation of its station after August 31, 2004. In proposing this forfeiture amount, we recognize that the Commission considers a licensee who operates a station with an expired authorization in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²² Consistent with precedent,²³ we also propose a forfeiture in the amount of \$1,500 for JSMC’s failure to file a renewal application for its station within the time specified in Section 1.949(a) of the Rules. Thus, we propose an aggregate forfeiture of \$6,500 (\$5,000 for unauthorized operation and \$1,500 for failure to file a timely renewal application). The forfeitures relate to JSMC’s apparent violations that occurred within the past year, but take into account that they were continuous in nature over

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div., 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); (willful is any conscious or deliberate act and does not require intention to violate the Act or Rules and repeated means more than once).

¹⁹ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁰ 47 C.F.R. 1.80(b).

²¹ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application) (“*Discussion Radio*”).

²² See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8711 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Lazer Broadcasting*”); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”).

²³ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Lazer Broadcasting*, 21 FCC Rcd at 8712; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

a period of two years.²⁴

11. JSMC claims that its “only explanation [for the violations] is a genuine and innocent mistake.”²⁵ JSMC explains that “[a]s a hospital Jennie Stuart reviews contracts annually for expiration dates. Jennie Stuart has hundreds of providers, and somehow a mistake was made, clerically, and the expiration date was missed.”²⁶ JSMC also states that its “notes” section shows an expiration date of 2014.²⁷ As a Commission licensee, JSMC is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its PLMRS station.²⁸ In addition, JSMC seeks special consideration because of its non-profit status and states that “all fines and penalties will be from Jennie Stuart funds to operate the hospital.”²⁹ JSMC has not explained why a reduction of the forfeiture based on its non-profit status by itself would be appropriate.³⁰ We note, in this regard, that JSMC provided no financial information demonstrating an inability to pay the forfeiture.³¹ Accordingly, no downward adjustment of the proposed forfeiture on this basis is warranted. We find, however, that a downward adjustment of the proposed forfeiture from \$6,500 to \$5,200 is warranted because JSMC made voluntary disclosures to Commission staff through its request for STA and undertook corrective measures after learning of its violations, but *prior* to any Commission inquiry or initiation of enforcement action.³²

²⁴ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. *See, e.g., Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Compass, Inc. D/B/A Compass Global*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 15132, 15138 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *NWN*, 21 FCC Rcd at 3925.

²⁵ *LOI Response* at 5.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ *See Discussion Radio*, 19 FCC Rcd at 7437; *see also Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Hare*”); *Twin Cities Public Television, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13428, 13430 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Twin Cities*”); *Lazer Broadcasting*, 21 FCC Rcd at 8711; *Gilmore Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-6287 (Enf. Bur., Spectrum Div., 2006) (“*Gilmore*”); *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁹ *LOI Response* at 5.

³⁰ *See Valley Public Television, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 22795, 22796 (1998) (rejecting a non-profit public television licensee's claim that payment of a forfeiture would threaten its continued provision of service to the public where the financial data submitted by the licensee showed that it had the ability to pay the forfeiture); *see also Donald Donovan Jackson*, Forfeiture Order, 19 FCC Rcd 15327, 15329 (Enf. Bur. 2004); *Concilio Mision Cristiana Fuente De Agua Viva*, Forfeiture Order, 17 FCC Rcd 19132, 19134 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 6210 (Enf. Bur. 2003).

³¹ *See infra* paragraph 16.

³² *See Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *see also Hare*, 21 FCC Rcd at 13520; *Twin Cities*, 21 FCC Rcd at 13431; *Lazer Broadcasting*, 21 FCC Rcd at 8711; *Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

III. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³³ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁴ Jennie Stuart Medical Center **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of five thousand, two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁵ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Jennie Stuart Medical Center **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment of the *NAL* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁶

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling the forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and Certified Mail Return Receipt Requested to Daniel T. Burns, Esq., Counsel for Jennie Stuart Medical Center, White, White & Crenshaw, 707 South Main Street, PO Box 2, Hopkinsville, Kentucky 42241 and Jennie Stuart Medical Center at PO Box 2400, Hopkinsville, KY, 42241-2400.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³³ 47 U.S.C. § 503(b).

³⁴ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³⁵ 47 C.F.R. § 1.80.

³⁶ See 47 C.F.R. § 1.1914.